



**-- FREEDOM OF INFORMATION REQUEST ADDENDUM --**

March 2, 2010

William G. Stewart II  
Assistant Director  
U.S. Department of Justice  
Executive Office for United States Attorneys  
Freedom of Information & Privacy Staff  
600 E. Street, N.W., Suite 7300, Bicentennial Building  
Washington, D.C. 20530

**Re: Request number 10-75**

Dear Mr. Stewart:

This letter constitutes an addendum to FOIA request number 10-75. In our letter dated December 30, 2009, we requested both expedited processing and a fee waiver.

We received a response from your office dated January 27, 2010 in which you denied our request for expedited processing. Your letter made no mention of our request for a fee waiver. This letter is intended to clarify that we are also seeking a fee waiver.

The request seeks basic information about the workings of federal programs run by the FBI and the U.S. Attorney's office, which collaborate with local law enforcement agencies. The request seeks information on how authority is divided, how information is shared, and what safeguards are in place to ensure the civil liberties of those whom it targets.

For the reasons stated below, we once again respectfully request a waiver of fees associated with the gathering, copying and mailing of these records.

## **Requesters are entitled to a fee waiver**

The ACLU of Massachusetts (ACLUM) and Political Research Associates (PRA) are entitled to a fee waiver under the FOIA statute and Department of Justice Regulations for two reasons. First, the requesters qualify as representatives of the news media. Second, release of the records requested is in the public interest and not in any commercial interest of the requesters.

### **1. ACLUM and PRA are representatives of the news media as defined in the statute and regulations.**

The requesters are entitled to a fee waiver because they are representatives of the news media under both the FOIA statute and the Department of Justice regulations regarding FOIA fees. 5 U.S.C §551(a)(4)(A)(ii); 28 CFR 16.11(d)(1). Both are representatives of the news media in that they are organizations “actively gathering news for an entity that is organized and operated to publish or broadcast news to the public,” where “news” is defined as “information that is about current events or that would be of current interest to the public.” 5 U.S.C. § 552(a)(4)(A)(ii)(II); 28 CFR § 16.11(b)(6).

In addition, the requesters meet the statutory definition because each one is “an entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience.” *Nat’s Security Archive v. Dep’t of Defense*, 880 F.2d 1381, 1387 (D.C. Cir 1989). *See also Electronic Privacy Information Ctr. v. Dep’t of Defense*, 241 F.Supp. 2d 5, 10-15 (D.D.C. 2003) (finding non-profit interest group that disseminated an electronic newsletter and published books was a “representative of the media” for purposes of FOIA.)

The text of the Department of Justice regulations clarifies that “news media” does not only apply to full-time journalists with press credentials. In a clarification of the term, the regulations state that, “[f]or example, a requester within the category in paragraph (d)(1)(ii) of this section, if not a full-time member of the news media, must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his or her sole occupation.” 28 C. F. R. § 16.5 (c)(3).

Courts have further confirmed the broad scope of the definition of news media. In a case regarding a request made by a similar advocacy organization, the Electronic privacy Information Center, the D.C. Circuit held that “[i]t is critical that the phrase ‘representative of the news media’ be broadly interpreted if the act is to work as expected . . . [I]n fact, any person or organization which regularly publishes or disseminates information to the public . . . should qualify for waivers as a ‘representative of the news media.’” *Electronic Privacy Information Ctr. v. Dep’t of Defense*, 241 F.Supp. 2d 5, 10 (D.D.C. 2003) (holding that non-profit public interest group that disseminated an electronic newsletter and published books was a “representative of the media” for purposes of FOIA).

Gathering, analyzing and disseminating information that is relevant and current to issues relating to civil liberties and privacy are key components of the work of both PRA and ACLUM. Both organizations continually and as part of their core functions disseminate information of public interest through internet, print, television and radio. Such information reaches thousands of members of the public including students, journalists, academics, advocates, members of government and interested readers every year.

ACLUM, a not-for-profit, non-partisan organization with over 22,000 members and supporters across Massachusetts. ACLUM is Massachusetts's affiliate of the national ACLU, an organization with over 500,000 members nationwide. Working together with its national partner, ACLUM distributes information to hundreds of thousands of members and the general public throughout the country.

In fact, gathering and disseminating current information to the public is a critical and substantial component of ACLUM's mission and work. ACLUM publishes newsletters, news briefings, reports and other printed materials that are disseminated to the public. These materials are widely available to everyone, including tax-exempt organizations, not-for-profit groups, law students and faculty, at no cost. ACLUM also disseminates information through its heavily subscribed website, [www.aclum.org](http://www.aclum.org), a blog, <http://www.massrightsblog.org> and regular posts on social media sites such as Facebook and Twitter. Its web postings address civil liberties issues in depth, provide features on civil liberties issues in the news, and contain hundreds of documents that relate to the issues addressed by ACLUM. The website includes features on information obtained through the FOIA. See, e.g., [www.aclum.org/ice](http://www.aclum.org/ice).

PRA, a progressive research organization, was established in 1981. Its mission is to advance a just, democratic, and pluralistic society. Its incisive research and analysis on U.S. government-sponsored political repression and the Right Wing's movements, institutions, and ideologies that undermine human rights supplies civil liberties and social change advocates with the depth and breadth of information to challenge systemic oppression. PRA disseminates its work widely. PRA holds a unique niche in the progressive social justice community as it is the *only* organization that looks in detail at all sectors of the Right – secular, religious, and xenophobic – and the tactics they use to negate, or attempt to negate, the principles and policies that are the cornerstones of an open and egalitarian society.

PRA's overall goal is to advance progressive thinking and action by providing social justice allies – individual and organizational activists/organizers/advocates at the grassroots and national levels, journalists, social scientists, and other stakeholders – with in-depth research, analysis, and referrals related to our major issue areas identified in its strategic plan:

- Civil Liberties
- Reproductive Justice

- LGBT and Gender Equality and Justice
- Racial and Economic justice (with special attention to immigrant rights under both of these categories)
- Understanding the Right

These characteristics are typically sufficient to convey “representative of the news media” status on FOIA requesters. On account of these factors, the ACLU has not been charged fees associated with responding to FOIA requests on numerous occasions.<sup>1</sup>

Organizations similar to ACLUM and PRA have also been found to meet the statutory definition of “representative of the news media” when the organization making the request is “an entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience.” *Nat’l Security Archive v. Dep’t of Defense*, 880 F.2d 1381, 1387 (D.C.Cir 1989) (finding that organization was a “representative of the news media”).

The December 30<sup>th</sup> letter included exhibits that provide samples of the news materials that both ACLUM and PRA regularly distribute to the public.

**2. The records sought are in the public interest and the requesters have no commercial interest in the disclosure.**

The requesters are entitled to a waiver or reduction of fees because “[d]isclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government,” and “[d]isclosure of the information is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); 28 CFR § 16.11(k)(1)(i) and (ii).

This request aims at furthering public understanding of government conduct, Specifically it seeks to help the public determine the ways in which government agencies work together to share information and intelligence gathered through intra-agency initiatives involving law enforcement and other public and private entities. Recent media coverage of the growing concern about such initiatives demonstrates the public interest in the documents sought. *See e.g. Report: FBI paid controversial NJ blogger for help*,

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<sup>1</sup> The following are examples of requests in which government agencies did not charge the ACLU or ACLUM fees associated with responding to a FOIA request: (1) Immigration and Customs Enforcement granted the ACLU of Massachusetts a waiver of all search fees for a request submitted on Jan. 25, 2007; (2)The Office of Science and Technology Policy in the Executive Office of the President told the ACLU that it would waive the fees associated with a FOIA request submitted by the ACLU in August 2003; (3) The Federal Bureau of Investigation did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in August 2002; (4) The Office of Intelligence Policy and Review did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in August 2002; and (5) The Office of Information and Privacy in the Department of Justice did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in August 2002.

Associated Press, November 29, 2009; Stephanie Ebbert, *Fusion Center takes aim at terror, But secrecy alarms civil libertarians*, The Boston Globe, September 26, 2005; T.J. Greaney, *'Fusion center' data draws fire over assertions: Politics, banners seen as suspect*, Columbia Daily Tribune, March, 14, 2009; Hilary Hylton, *Fusion Centers: Giving Cops Too Much Information?*, Time Magazine, March 9, 2009; Robert O'Harrow, Jr., *Centers Tap Into Personal Databases, State Groups Were Formed After 9/11*, The Washington Post, April 2, 2008; Ryan Singel, *Fusion Center Cash Infusion*, Wired Magazine, March 14, 2007; Brent Kendall, *FBI to Assess Actions Before Hood Shooting*, The Wall Street Journal, December 9, 2009.

ACLUM and PRA are non-profit organizations whose purposes are the protection of civil rights and liberties and to advance a just, democratic, and pluralistic society. As such, the requesters have no "commercial interest" in the information.

### **CONCLUSION**

For the reasons stated above, we urge you to find that the requesters are entitled to a waiver of fees.

Please reply to this request by contacting Laura Rótolo at the address above, (617) 482-3170 x311 or through email at [lrotolo@aclum.org](mailto:lrotolo@aclum.org).

Thank you for your prompt attention to this matter.

Sincerely,

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Laura Rótolo  
ACLUM Staff Attorney

Thomas R. Cincotta  
PRA Civil Liberties Project Director